

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RICHARD D. MCKEAN,

Plaintiff,

v.

CIV-09-1129 WJ/LAM

SALLY HERNANDEZ, et al.,

Defendants.

**ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR LIMITED DISCOVERY
FOR PROPER SERVICE OF PROCESS ON MS[.] CONNIE MARTINEZ (Doc. 42)**

THIS MATTER is before the Court on Plaintiff's¹ *Motion for Limited Discovery for Proper Service of Process on Ms[.] Connie Martinez* (Doc. 42), filed February 1, 2011. Defendants filed their response on February 15, 2011. [Doc. 44]. Plaintiff has not filed a reply and the time for doing so has passed. Having considered the motion, response, record of this case and relevant law, the Court **FINDS** that the motion should be **GRANTED in part** and **DENIED in part**.

In his motion, Plaintiff seeks to conduct limited discovery to ask Defendant to disclose: (1) whether Ms. Connie Martinez is "currently employed in any capacity for the State of New Mexico;" and (2) if so, "knowledge of Ms[.] Martinez['] whereabouts that she might be properly served." [Doc. 42 at 2]. Plaintiff asks that the Court also allow him to constructively serve Ms. Martinez by publication if Defendants do not provide any information regarding Ms. Martinez' whereabouts. *Id.* Defendants state that they "do not oppose Plaintiff's request to conduct limited discovery for the purpose of locating Ms. Connie Martinez;" however, they do not agree to

¹The Court notes that all claims brought by Plaintiff Jeanie C. McKean have been dismissed, so Plaintiff Richard D. McKean is the only remaining plaintiff in this case. See *Memorandum Opinion and Order on Defendant's Motion to Dismiss and Motion to Strike Second Amended Complaint* (Doc. 38) at 1-2 (fn 1) and 22.

Plaintiff's request to serve Ms. Martinez by publication because service by publication should be conducted as a last resort. [*Doc. 44* at 1-2]. The Court agrees with Defendants that service by publication is not warranted at this time. *See* NMRA, Rule 1-004(J) (service by publication can be made only upon a motion with an affidavit stating "that service cannot be reasonably made as provided by this rule") and Fed. R. Civ. P. 4(e)(1)-(2) (service by publication available in federal court only pursuant to state law). In the interests of justice and to expedite the disposition of this case, the Court will allow Plaintiff to conduct limited discovery for the purpose of locating Ms. Martinez, but will not allow service by publication at this time.

IT IS THEREFORE ORDERED that Plaintiff's *Motion for Order Compelling Disclosure or Discovery Pursuant to Rule 37 Fed. R. Civ. P.* (*Doc. 21*) is **GRANTED in part** and **DENIED in part** as set forth herein.

IT IS FURTHER ORDERED that Plaintiff may serve upon Defendants written discovery limited to the issue of Defendants' knowledge of the whereabouts of Ms. Martinez, **within ten (10) days of this Order.**

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE